Office-Supreme Court, U.S.
FILED
MAR 3 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-799

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
Petitioner,

v.

FEDERAL LABOR RELATIONS AUTHORITY, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

---

BRIEF *AMICUS CURIAE* OF PUBLIC SERVICE RESEARCH COUNCIL

EDWIN VIEIRA, JR.
13877 Napa Drive
Manassas, Virginia 22110
(703) 791-6780

Counsel of Record for Amicus Curiae
Public Service Research Council

3 March 1983

FANNON PRINTING CENTER, ALEXANDRIA, VIRGINIA 22301 (703) 683-5600

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
INTRODUCTION	1
INTEREST OF THE *AMICUS CURIAE*	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	3
I. By its very nature, participation by the National Treasury Employees Union in collective bargaining with the Bureau of Alcohol, Tobacco and Firearms is not "official business" of the national government	8
II. Congress has never defined collective bargaining by civil-service unions as part of the "official business" of the national government	11
III. The statutory authorization of "official time" for representatives of civil-service employees engaged in collective bargaining does not render their participation in such bargaining "official business" of the national government	12
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977) ..6, 10

Application of Knapp-Monarch Co., 296 F.2d 230 (Ct. Cust. & Pat. App. 1961) 7

Block v. Hirsh, 256 U.S. 135 (1921) 6

Borden's Farm Prods. Co., Inc. v. Baldwin, 293 U.S. 194 (1934) 7

TABLE OF AUTHORITIES—Continued

	Page
Brown v. Piper, 91 U.S. 37 (1875)	7
Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Authority, 672 F.2d 732 (9th Cir. 1982)	3, 11, 12, 13
Caine v. United States, 73 F. Supp. 1019 (N.D. Ill. 1947)	8
Chapman v. Gerard, 341 F. Supp. 1170 (D. V.I. 1970), *aff'd*, 456 F.2d 577 (3d Cir. 1972)	9
Metcalf & Eddy v. Mitchell, 269 U.S. 514 (1962)	8
NLRB v. American Nat'l Ins. Co., 343 U.S. 395 (1952)	9
NLRB v. Insurance Agents, 361 U.S. 477 (1960)	10
Ohio Bell Telephone Co. v. Public Util. Comm'n, 301 U.S. 292 (1937)	7
Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342 (1944)	9
A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935)	6, 9
Tyson & Brother v. Banton, 273 U.S. 418 (1927)	6
United States v. Hartwell, 73 U.S. (6 Wall.) 385 (1868)	8
United States v. Zazove, 334 U.S. 602 (1948)	13
Wetzel v. McNutt, 4 F. Supp. 233 (S.D. Ind. 1933)	9
Yaselli v. Goff, 12 F.2d 396 (2d Cir. 1926), *aff'd*, 275 U.S. 503 (1927)	9

Statutes and Court Rule

5 U.S.C. § 5702(a) (1976)	7, 12, 14
5 U.S.C. § 7101(a) (1976)	3, 5
5 U.S.C. § 7101(a)(1)(B) (1976)	11

TABLE OF AUTHORITIES—Continued

Page

5 U.S.C. § 7101(b) (1976) 5

5 U.S.C. § 7103(a)(4)(C) (1976) 8

5 U.S.C. § 7131 (1976) 7, 14

5 U.S.C. § 7131(a) (1976) 12, 13, 14

5 U.S.C. § 7131(b) (1976) 13, 14

Rule 36.3 of the Rules of the Supreme Court of the United States 1

Miscellaneous

P. Bradley, *Constitutional Limits to Union Power* (1976) 4

Lieberman, "Academic Bias in Public Sector Labor Relations", *Gov't Union Rev.*, Vol. 3, No. 4 (Fall 1982) 4

M. Lieberman, *Public-Sector Bargaining: A Policy Reappraisal* (1980) 4

Lieberman, "Teacher Bargaining: An Autopsy", *The Kappan* (Dec. 1981) 4

Lieberman, "The Costs of Collective Bargaining in the Modesto City School Districts: A Case Study", *Gov't Union Rev.*, Vol. 2, No. 1 (Winter 1981) .. 4

Love & Sulzner, "Political Implications of Public Employee Bargaining", 11 *Ind. Rel.* 18 (1972) .. 10

S. Perlman, *A Theory of the Labor Movement* (1928) 9

Petro, "Compulsory Public Sector Bargaining and Arbitration in the Courts", *Gov't Union Rev.*, Vol. 3, No. 3 (Summer 1982) 4-5

Petro, "Public-Sector Bargaining: An Assessment", *Gov't Union Rev.*, Vol. 3, No. 1 (Winter 1982) .. 4

Petro, "Sovereignty and Compulsory Public-Sector Bargaining", 10 *Wake Forest L. Rev.* 25 (1974) . 4

TABLE OF AUTHORITIES—Continued

Page

R. S. Summers, *Collective Bargaining and Public Benefit Conferral: A Jurisprudential Critique* (N.Y. State School of Indus. & Lab. Rel'ns, Inst. of Pub. Employment, Monograph No. 7, Nov. 1976) 4

Summers, "Public Employee Bargaining: A Political Perspective", 83 *Yale L.J.* 1156 (1974) 10

Summers, "Public Sector Bargaining: Problems of Governmental Decision Making", 44 *Cinn. L. Rev.* 669 (1975) 10

Summers, "Public Sector Collective Bargaining Substantially Diminishes Democracy", *Gov't Union Rev.*, Vol. 1, No. 1 (Winter 1980) 5

Vieira, "Are Public-Sector Unions Special Interest Political Parties?", 27 *DePaul L. Rev.* 293 (1978) 5

Vieira, "Compulsory Public Sector Collective Bargaining: The Trojan Horse of Corporativism", *Gov't Union Rev.*, Vol. 2, No. 1 (Winter 1981) . 4

Vieira, "Constitutional Limitations on the Assessment of Agency Fees in Public Sector Employment," *Gov't Union Rev.*, Vol. 3, No. 4 (Fall 1982) 5

Vieira, "Exclusive Representation *versus* Freedom of Petition for Nonunion Public Employees — A Study in Irreconcilable Constitutional Conflict", 1977 *Det. C. L. Rev.* 499 5

Vieira, "Of Syndicalism, Slavery and the Thirteenth Amendment: The Unconstitutionality of "Exclusive Representation' in Public-Sector Employment", 12 *Wake Forest L. Rev.* 515 (1976) 5

E. Vieira, Jr., *"To Break and Control the Violence of Faction": The Danger to Representative Government from Compulsory Public-Sector Collective Bargaining* (1980) 5

No. 82-799

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
Petitioner,

v.

FEDERAL LABOR RELATIONS AUTHORITY, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

BRIEF *AMICUS CURIAE* OF PUBLIC SERVICE RESEARCH COUNCIL

INTRODUCTION

Pursuant to Rule 36.3 of the Rules of this Court, Public Service Research Council submits this brief *amicus curiae* in support of Petitioner Bureau of Alcohol, Tobacco and Firearms (BATF). All parties to this case have consented to the filing of this brief.[1]

[1] The Council has filed with the Clerk of this Court letters from counsel for the parties pertaining to its request to participate as *amicus curiae*.

INTEREST OF THE *AMICUS CURIAE*

Public Service Research Council is an independent national association of some 900,000 scholars, commentators, legislators, and private citizens from all walks of life united by a common concern for the maintenance of effective constitutional government. The Council engages in non-partisan research and education regarding, among other things, the character and operation of collective bargaining in public employment, and its effects on governmental institutions and the provision of public services at the local, state, and national levels.

The Council has developed considerable expertise concerning the philosophical, political, social, legal, economic, and practical aspects of public-sector unionism and collective bargaining.[2] On numerous occasions, it has provided this and other Courts with its views in briefs *amicus curiae*.[3]

---

[2] For example, the Council's sister-organization, the Public Service Research Foundation, regularly publishes scholarly articles on these subjects in the *Government Union Review: A Quarterly Journal on Public Sector Labor Relations*.

[3] Perry Educ. Ass'n v. Perry Local Educators' Ass'n, No. 81-896 (U.S. Sup. Ct.); National League of Cities v. Usery, No. 74-878 (U.S. Sup. Ct.); City of Madison, Joint School Dist. No. 8 v. WERC, No. 75-946 (U.S. Sup. Ct.); Jackson Transit Authority v. Local Division 1285, Transit Union, No. 81-411 (U.S. Sup. Ct.); PATCO v. United States, No. 81-542 (U.S. Sup. Ct.); Virginia v. Arlington County Bd. of Supervisors, No. 18747 (Va. Ct. App.); Pacific Legal Foundation v. Brown, 3 Civil No. 18364 (Cal. Ct. App.); United States v. PATCO, Civil Action No. 81-1805 (D. D.C.); United States v. PATCO, Civil Action No. 81-0763A (E.D. Va.); Air Transport Ass'n of America v. PATCO, No. 70-C-400 (E.D.N.Y.).

In the instant case, the Council believes that the parties may not fully present to this Court what the Council sees as the central issue: namely, that participation by a union in public-sector bargaining can never be part of the "official business" of government. For that reason, the Council files this brief *amicus curiae*.

SUMMARY OF THE ARGUMENT

The decision of the Court of Appeals for the Ninth Circuit that participation in collective bargaining by a union of civil-service employees is "official business" of the national government flies in the face of generally recognized principles of public-sector collective bargaining, of Congress' refusal to define such bargaining as "official business" of the government, and of the unequivocal language of the very statute on which the Court of Appeals relies.

ARGUMENT

The real issue in this case is not whether Congress' assertion that "labor organizations and collective bargaining in the civil service are in the public interest"[4] is true or false.[5] Hardly any question in contemporary employment-relations is more controversial than the effects of public-employee unionism on the general welfare from the perspective of political economics, political science, and constitutional law. Notwithstand-

---

[4] 5 U.S.C. § 7101(a) (1976).

[5] *Pace* the contrary assumption of the Court of Appeals. Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Authority, 672 F.2d 732, 738 (9th Cir. 1982).

ing initially widespread support from politically influential public-sector unions, legislators, and self-interested academics;[6] and despite the existence of numerous collective-bargaining laws applicable to employees of local, state, and national government; today, "[i]ntellectually, [public-sector bargaining] is already dead".[7] Increasingly, both theoretical and empirical investigations in political economics document the impracticality of public-sector bargaining as a procedure for allocating scarce public revenues among competing governmental services.[8] Analyses in political science describe the corporative-state nature of such bargaining,[9] and its inconsistency with the fundamental conceptions of governmental and popular sovereignty.[10] And studies in constitutional law disclose

---

[6] *See* Lieberman, "Academic Bias in Public Sector Labor Relations", *Gov't Union Rev.*, Vol. 3, No. 4 (Fall 1982), at 3.

[7] Lieberman, "Teacher Bargaining: An Autopsy", *The Kappan* (Dec. 1981), at 231, 232.

[8] *E.g.*, R. S. Summers, *Collective Bargaining and Public Benefit Conferral: A Jurisprudential Critique* (N.Y. State School of Indus. & Lab. Rel'ns, Inst. of Pub. Employment, Monograph No. 7, Nov. 1976); M. Lieberman, *Public-Sector Bargaining: A Policy Reappraisal* (1980); *idem*, "The Costs of Collective Bargaining in the Modesto City School Districts: A Case Study", *Gov't Union Rev.*, Vol. 2, No. 1 (Winter 1981), at 3.

[9] Vieira, "Compulsory Public Sector Collective Bargaining: The Trojan Horse of Corporativism", *Gov't Union Rev.*, Vol. 2, No. 1 (Winter 1981), at 56. *See also* P. Bradley, *Constitutional Limits to Union Power* (1976).

[10] *E.g.*, Petro, "Sovereignty and Compulsory Public-Sector Bargaining", 10 *Wake Forest L. Rev.* 25 (1974); *idem*, "Public-Sector Bargaining: An Assessment", *Gov't Union Rev.*, Vol. 3, No. 1 (Winter 1982), at 3; *idem*, "Compulsory Public Sector Bargaining and Arbitration in the Courts", *Gov't Union Rev.*, Vol. 3,

the repugnance of compulsory unionism among public employees to basic guarantees of individual liberty.[11]

Arguably, Congress recognized the myriad problems collective bargaining for employees of the national government poses when it declared its "purpose * * * to establish procedures * * * designed to meet the special requirements and needs of the Government", and when it premonished the courts to "interpre[t]" these procedures "in a manner consistent with the requirement of an effective and efficient Government".[12] And, therefore, its statement that "labor organizations and collective bargaining in the civil service are in the public interest "[13] sanctions only such bargaining as actually consists with "the requirement of an effective and efficient Government", rather than broadly endorsing whatever special privileges unions

---

No. 3 (Summer 1982), at 3; Summers, "Public Sector Collective Bargaining Substantially Diminishes Democracy", *Gov't Union Rev.*, Vol. 1, No. 1 (Winter 1980), at 1; E. Vieira, Jr., *"To Break and Control the Violence of Faction": The Danger to Representative Government from Compulsory Public-Sector Collective Bargaining* (1980).

[11] Vieira, "Of Syndicalism, Slavery and the Thirteenth Amendment: The Unconstitutionality of 'Exclusive Representation' in Public-Sector Employment", 12 *Wake Forest L. Rev.* 515 (1976); *idem*, "Are Public-Sector Unions Special Interest Political Parties?", 27 *DePaul L. Rev.* 293 (1978); *idem*, "Exclusive Representation *versus* Freedom of Petition for Nonunion Public Employees — A Study in Irreconcilable Constitutional Conflict", 1977 *Det. C. L. Rev.* 499; *idem*, "Constitutional Limitations on the Assessment of Agency Fees in Public Sector Employment", *Gov't Union Rev.*, Vol. 3, No. 4 (Fall 1982), at 31.

[12] 5 U.S.C. § 7101(b) (1976).

[13] 5 U.S.C. § 7101(a) (1976).

of civil-service employees may demand, and Respondent Federal Labor Relations Authority (FLRA) may grant, in the name of "collective bargaining".

For that reason, if this case turned on whether the FLRA's interpretation of the law is valid because the agency's notion of what "collective bargaining" in the civil service requires accurately reflects the public interest, on whether that interpretation satisfies "the requirement of an effective and efficient Government," or on whether (in the ultimate analysis) labor organizations and collective bargaining can co-exist with that requirement at all, this Court would have to determine for itself, independently of any congressional declaration, what constitutes "the public interest" regarding collective bargaining in civil-service employment [14]—and therefore would have to confront serious questions of statutory and constitutional law that lack any substantial predicate of facts in the record,[15] and are not appropriate for

---

[14] On the one hand, this Court may disregard the congressional statement that "labor organizations and collective bargaining • • • are in the public interest" as a *finding of political-economic fact*, because at best it constitutes mere conjecture as to the general future effect of the employment-relations procedure Congress established. *See* A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 538 (1935). On the other hand, this Court may also disregard that statement as a *conclusion of constitutional law*, because no such legislative declaration as to what constitutes the public interest, welfare, or necessity can preclude judicial review of the issue. *E.g.*, Block v. Hirsh, 256 U.S. 135, 154 (1921); Tyson & Brother v. Banton, 273 U.S. 418, 431 (1927).

[15] A complete factual record, of course, if the *sine qua non* of constitutional adjudication. *E.g.*, Abood v. Detroit Bd. of Educ., 431 U.S. 209, 236-37 (opinion of Stewart, J.), 244 n. (opinion of Stevens, J.) (1977).

decision on the basis of judicially noticeable knowledge.[16] This case, however, turns on an issue far narrower than the antagonism of the FLRA's interpretation of the law to the public interest in effective and efficient government: namely, whether participation by Respondent National Treasury Employees Union (NTEU) in collective bargaining with the BATF is "official business" under the law providing for payment of *per diem* expenses for persons engaged in such business.[17] And this question the Court can answer dispositively in the negative simply on the basis of: (i) its general knowledge of public-sector collective bargaining; (ii) Congress' refusal to define such bargaining as part of the "official business" of the government; and (iii) the unambiguous language of the very statute on which the FLRA relies.[18]

---

[16] In light of the searching criticisms of public-sector bargaining outlined heretofore, pp. 3-5 & nn.6-11, the presumption against judicial notice is particularly apt. *See* Brown v. Piper, 91 U.S. 37, 42-43 (1875). Certainly, the consistency of such bargaining with the public interest is not "capable of • • • instant and unquestionable demonstration". Application of Knapp-Monarch Co., 296 F.2d 230, 232 (Ct. Cust. & Pat. App. 1961). Neither are the peculiar political-economic and political-scientific facts on which that issue depends for resolution so determinate or notorious as to obviate reliance on the usual forms of evidence. *See, e.g.*, Ohio Bell Telephone Co. v. Public Util. Comm'n, 301 U.S. 292, 300-02 (1937); Borden's Farm Prods. Co., Inc. v. Baldwin, 293 U.S. 194, 207-11 (1934).

[17] 5 U.S.C. § 5702(a) (1976).

[18] 5 U.S.C. § 7131 (1976).

I. By its very nature, participation by the National Treasury Employees Union in collective bargaining with the Bureau of Alcohol, Tobacco and Firearms is not "official business" of the national government.

Whether or not participation in collective bargaining by negotiators representing the BATF is "official business" of the government, such participation by representatives of the NTEU (or any other public-employee union) is not, for two reasons relating to the very nature of public-sector bargaining.

First, the NTEU is indisputably a private organization, not an agency of the national government; and the persons who represent it in collective bargaining with the BATF are merely private citizens, not public officials. Indeed, the applicable statute denies the very status of "labor organization" to any "organization sponsored by an agency"[19]—implying that, far from rendering the NTEU a part of the government, its privilege to participate at all in collective bargaining depends upon the union's strict separation from any public agency. Moreover, although the NTEU's members who negotiate on its behalf are public employees, they are not thereby public officials, too. After all, the distinction between public employment and public office is fundamental: Public employment involves only the fulfillment of *contractual* duties of a public nature; whereas, in addition to the essential characteristics of tenure, duration, emolument, and duties fixed by law,[20] public office involves

---

[19] 5 U.S.C. § 7103(a)(4)(C) (1976).

[20] *E.g.*, Metcalf & Eddy v. Mitchell, 269 U.S. 514, 519-20 (1926); United States v. Hartwell, 73 U.S. (6 Wall.) 385, 393 (1868).

an exercise of some part of the sovereign power of the government.[21] And if the mere participation in collective bargaining with the BATF infused the representatives of the NTEU with the prerogatives of public officials, then the statute authorizing such bargaining would raise the most serious problems of unconstitutional delegation of public authority to private parties.[22]

Second, the relationship between the BATF and the NTEU in collective bargaining is *adversarial,* negating the notion that both parties are pursuing the same interests, or acting in the same capacity vis-a-vis the public. The contemporary process of compulsory collective bargaining is the embodiment in statute form of the philosophy of trade unionism.[23] And that philosophy posits the existence of a permanent struggle between employers and organized employees, in which the central role of unions is to compel employers to grant ever-increasing economic concessions to wage-earners.[24] Thus, the structure and regulation of collective bargaining rests on the assumption that "[t]he

---

[21] *E.g.*, Yaselli v. Goff, 12 F.2d 396, 403-04 (2d Cir. 1926), *aff'd*, 275 U.S. 503 (1927); Chapman v. Gerard, 341 F. Supp. 1170, 1173-74 (D.V.I. 1970); *aff'd*, 456 F.2d 577 (3d Cir. 1972); Caine v. United States, 73 F. Supp. 1019, 1021 (N.D. Ill. 1947); Wetzel v. McNutt, 4 F. Supp. 233, 234 (S.D. Ind. 1933).

[22] *Compare* A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 537 (1935), *with* the authorities cited *ante*, note 10.

[23] *E.g.*, NLRB v. American Nat'l Ins. Co., 343 U.S. 395, 408 (1952) (National Labor Relations Act); Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 346 (1944) (Railway Labor Act).

[24] *E.g.*, S. Perlman, *A Theory of the Labor Movement* (1928).

parties * * * proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest".[25]

Specifically in the public sector, collective-bargaining laws assume: (i) that terms and conditions of employment public officials "unilaterally" set are necessarily "unfavorable" or "unfair" to public employees; (ii) that public employers and their employees are separated by differences in outlook, motivation, goals, and values that cannot be resolved except through a formal process of compulsory negotiation;[26] and (iii) that therefore government should encourage the monopolistic organization of its employes in unions, and grant those unions special political powers and privileges to influence, control, or even override the normal political process.[27] Indeed, the whole thrust of public-sector collective bargaining is directed at "redistributing [political] power" from governmental officials to unions representing public employees.[28]

Yet, if governmental officials concededly engage in "official business" when they bargain collectively with representatives of public employees; and if those representatives are the officials' *adversaries* in such bar-

---

[25] NLRB v. Insurance Agents, 361 U.S. 477, 488 (1960).

[26] *E.g.*, Love & Sulzner, "Political Implications of Public Employee Bargaining", 11 *Ind. Rel.* 18, 25 (1972).

[27] *E.g.*, Summers, "Public Employee Bargaining: A Political Perspective", 83 *Yale L.J.* 1156 (1974).

[28] R. S. Summers, *ante* note 8, at 3. *Accord, e.g.*, Summers, "Public Sector Bargaining: Problems of Governmental Decision Making", 44 *Cinn. L. Rev.* 669, 674 (1975). *See also* Abood v. Detroit Bd. of Educ., 431 U.S. 209, 228-29 (1977) (opinion of Stewart, J.).

gaining, and "proceed from *contrary* and * * * *antagonistic* viewpoints and concepts of self-interest; then the representatives cannot themselves be engaged in "official business"—unless one accepts the self-evidently incoherent premiss that the government has identical interests in the pursuit of two mutually contradictory collective-bargaining goals.

II. Congress has never defined collective bargaining by civil-service unions as part of the "official business" of the national government.

Contrary to the implication of the Court of Appeals,[29] Congress has never declared that a civil-service union's participation in collective bargaining is part of the "official business" of the government. In the applicable statute, Congress asserted that collective bargaining "contributes to the effective conduct of public business"[30]—but it did not state that such bargaining on the part of employee-representatives *is* "public business", in fact or in law. Self-evidently, many diverse private activities "contribute to the effective conduct of public business". Indeed, no modern state without totalitarian power—and certainly no government of a free society—could function efficiently without pervasive cooperative interaction with private citizens, corporations, and associations. However, no one could reasonably argue that these private activities necessarily *become* "public business" simply because they *contribute to* it, any more than a private taxpayer becomes a public functionary through his mere subsidization of public expenditures.

---

[29] 672 F.2d at 737-38.

[30] 5 U.S.C. § 7101(a)(1)(B) (1976).

III. The statutory authorization of "official time" for representatives of civil-service employees engaged in collective bargaining does not render their participation in such bargaining "official business" of the national government.

As sustained by the Court of Appeals, the crux of the FLRA's position is that, "if [NTEU] negotiators are on official time [within 5 U.S.C. § 7131(a)], they should be interpreted to be on official government business within the meaning of 5 U.S.C. § 5702(a)".[21] This view rests on an obvious misreading of section 7131.

First, the FLRA's interpretation begs the question of what possible purpose Congress could have had in following the tortuously indirect route of defining participation in collective bargaining by "[a]ny employee representing an exclusive representative" as "official business" within section 5702(a) by "authoriz[ing] official time for such purposes"—instead of simply declaring in section 7131(a) that "[a]ny employee representing an exclusive representative * * * shall be deemed to be in a duty status".

Second, the FLRA's interpretation neglects to take into account the clear differentiation section 7131(a) makes between collective bargaining and an employee's "duty status". Obviously, Congress believed that an employee is *not* in a "duty status" when "representing an exclusive representative in the negotiation of a collective bargaining agreement". So, in so far as "duty status" is another term for "official business", section 7131(a) itself establishes that participation in collective bargaining by employee-representatives is not "official business".

---

[21] 672 F.2d at 737.

Third, the FLRA's interpretation glosses over what section 7131(a) actually declares: namely, that employees are "*authorized* official time" for collective-bargaining purposes, not that they are "*on* official time". The statute thus operates as a narrow exception from the unstated general rule that participation in collective bargaining does not entitle the participant to "official time" or any emolument of office. The "authoriz[ation of] official time" constitutes merely a shorthand for a specific set of benefits that Congress deemed appropriate to confer on employee-negotiators *who otherwise would have had no reasonable claim to them, because of the unofficial nature of their activities.* However, Congress having specified these benefits with the inclusive designation "official time", neither the FLRA nor the Court of Appeals had any authority to expand the list of benefits in order to "equaliz[e]" the positions of the BATF and NTEU "with regard to collective bargaining".[22]

Fourth, the FLRA's interpretation of section 7131 (a) conflicts with the unequivocal statement in section 7131(b) that the "collection of dues" is part of "the internal business of a labor organization", and "shall be performed during the time the employee is in a non-duty status." No one disputes that a major purpose for the "collection of dues" by a union engaged in collective bargaining is to defray the various expenses of its bargaining-representatives. If the FLRA's view is correct, on the one hand Congress has indirectly arranged through sections 7131(a) and 5702(a) for the *public* subsidization of some of the NTEU's collective-bargaining expenses, while on the

---

[22] *Contrast id.* at 738 *with* United States v. Zazove, 334 U.S. 602, 616-17 (1948).

other hand it has directly stated in section 7131(b) that collection of monies for such subsidization is "the *internal* business of a labor organization". Similarly, if the FLRA's view is correct, on the one hand Congress had indirectly established in section 7131(a) that participation of employee-representatives in collective bargaining is "official business" of the government, while on the other hand it has directly stated in section 7131(b) that the "collection of dues" by their organization is *not* "official business" but rather "the internal business" of the organization—even though (supposedly) through the interaction of sections 7131(a) and 5702(a) Congress has also provided for the public to pay the employee-representatives' *per diem* expenses as a part of the government's "official business", with the effect that this payment obviates *pro tanto* the necessity for any "collection of dues"!

Obviously, the FLRA's interpretation renders section 7131 internally self-contradictory and ridiculous, and must be rejected on that ground alone.

CONCLUSION

This Court should reverse the decision of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

EDWIN VIEIRA, JR.
13877 Napa Drive
Manassas, Virginia 22110
(703) 791-6780

Counsel of Record for Amicus Curiae
Public Service Research Council

3 March 1983

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 28 of the Rules of this Court, I have served three (3) copies of the attached Brief *Amicus Curiae* of Public Service Research Council on each of the following persons, by depositing said copies in a United States post office, first-class postage prepaid, addressed as indicated below:

Rex E. Lee, Esq.
Solicitor General of the United States
United States Department of Justice
Washington, D.C. 20530

Steven Svartz, Esq.
Federal Labor Relations Authority
500 C Street, S.W.
Washington, D.C. 20424

John Bufe, Esq.
National Treasury Employees Union
1730 K Street, N.W.
Washington, D.C. 20006

EDWIN VIEIRA, JR.
13877 Napa Drive
Manassas, Virginia 22110
(703) 791-6780

Counsel of Record for Amicus Curiae
Public Service Research Council

Done this 3d day of March, 1983.